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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.639 OF 2005
IN
SUMMARY SUIT NO.1148 OF 2005

Sanat N. Rachh ... Plaintiff

V/s.

Uttam Yeshwant Khadpe ... Defendant

Mr.Sunil Patel i/b M/s.Sunil & Co. for Plaintiff
Mr.K.D. Jha for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **APRIL 17, 2006**

P.C.:

. The Suit has been filed for recovery of an amount of Rs.2,50,000/- which the Plaintiff had advanced to the Defendant by way of a friendly loan. There is no dispute that the amount of Rs.2,50,000/- was sought to be returned by the defendant by cheques, as detailed in Exhibit A to the plaint. These cheques were dishonoured as the funds were insufficient. The notice calling upon the defendant to repay the amount was replied by the defendant through his advocate on 28.5.2004.

2. The main defense in the reply is that the cheques were issued by the defendant by way of collateral security. It is alleged that the plaintiff is indulging in an illegal and unauthorised business of money lending. The defendant has also claimed that the plaintiff was expected to deposit the cheques only after the defendant informed him that he could encash the same.

3. The defendant has executed a declaration on a stamp paper which is at Exhibit E to the plaint indicating that the plaintiff had loaned him the amount of Rs.2,50,000/-. He promised to repay the entire amount between 15.1.2005 to 15.2.2005. The plaintiff's case is that due to the personal relations over the years between himself and the defendant that he advanced the loan to the defendant.

4. In reply to the Summons for Judgment, it is claimed that the plaintiff was indulging in an illegal business under the Bombay Moneylenders Act as he had no licence. Besides this, the defendant reiterated the other defenses raised in the reply to the demand notice.

5. Section 2(9) of The Bombay Moneylenders Act, 1946 (hereinafter referred to as "the Act") defines 'loan' to mean an advance at interest whether in money or in kind. Certain exceptions have been carved out. One of the advances not considered to be 'loan' is defined under section 2(9)(f) as an advance of any sum exceeding Rs.3,000/- made on the basis of a negotiable instrument as defined under the Negotiable Instruments Act, 1881 other than a promissory note. Under section 2(9)(f2) of the Act, an advance made bonafide by any person carrying on any business, not having for its primary object the lending of money, is not classified as a loan, if such advance is made in the regular course of his business.

6. The Plaintiff has pleaded that the defendant was carrying on the business of commercial Art printers and due to certain dealings with the defendant, the plaintiff advanced a friendly loan to the defendant. This loan, therefore, cannot be considered as loan under The Bombay Moneylenders Act.

7. Therefore, the defence raised is not tenable. The other contention of the defendant is that the plaintiff ought to have informed the defendant that he was going to encash the cheques as they constituted the collateral security given to the plaintiff. In my view, this defence also is without merit. Exhibit A to the plaint which has been issued by the plaintiff does not indicate that the cheques mentioned in that letter could be encashed only after the plaintiff informed the defendant. Furthermore, the defendant has admitted that he had been loaned the amount as promised and that he would pay the entire amount between the period from 15.1.2005 to 15.2.2005. Therefore, this defence also cannot be accepted.

8. Although the defendant has no real defence to the claim in the plaint, I am of the view that the Defendant should be given an opportunity to defend his case on certain conditions. Conditional leave is, therefore, granted to the defendant on his depositing an amount of Rs.2,50,000/- (Rupees Two lacs and fifty

thousand only) within eight weeks from today. In the event the Defendant deposits the aforesaid amount, the Prothonotary & Senior Master to invest the same in a Fixed Deposit of a nationalised Bank, initially for a period of three years, to be renewed thereafter. If the amount is not deposited within the stipulated period, the Plaintiff would be entitled to a decree as prayed for.

9. Upon deposit of the amount as aforesaid the Suit to be transferred to the list of Commercial Causes. Written Statement to be filed within four weeks from the date of the deposit. Affidavit, list of documents to be filed within four weeks thereafter. Discovery and inspection be completed within six weeks thereafter.

10. Summons for Judgment disposed of accordingly.